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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/668,643	09/22/2000	Andrew David Birrell	18973-50 (P00-3011)	2074
7590	09/26/2006		EXAMINER	
			PWU, JEFFREY C	
			ART UNIT	PAPER NUMBER
			2143	

DATE MAILED: 09/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/668,643	BIRRELL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jeffrey C. Pwu	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 June 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-4, 15-28, 30 and 44-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4, 15-28, 30 and 44-58 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 1 recites the limitation "its". There is insufficient antecedent basis for this limitation in the claim.
3. Regarding claims 1-4, 15-28, 30 and 44-58, the word "or" ('one or more partnership') renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-4, 15-28, 30 and 44-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bachman (US 4,631,664) in view of Crawford (US 5,771,354)  
As broadly drafted and as the best the Examiner can ascertain from the language of the claims:

Bachman discloses a system/method in partnership database management:

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forming one or more partnerships to store data received from one or more of its partners, whereby a first computer in each partnership assumes the task of storing data received from one or more other computers in the partnership and one or more of the other computers in the partnership assume the task of storing data received from the first computer accordance with each agreement; and (col.3, line 21-col.4, line 58)

periodically verifying that data is being retained by the computers committed to act as partners in accordance with each agreement. (col.5, line 13-col.6, line 65)

selecting potential partners from among the plurality computers based on predetermined criteria. (col.5, line 13-col.6, line 65)

negotiating the agreements between the plurality of computers based on predetermined requirements, including requirements (col.5, line 13-col.8, line 40)

Bachman fails to mention a partnership in backing up data.

Crawford teaches an Internet online backup system interactively establishes backup services which allows one (or more) partnership ("Diagnostics and Maintenance Services (block 204) include various programs stored on virtual disks to checkout, troubleshoot, and enhance the customer computer 50. Diagnostic programs can detect problems with memory or system board components. Peripheral management programs can be used for testing, alignment, storage maintenance, etc., to improve device throughput. Hardware errors detected by diagnostic programs during a customer automated session can trigger repair service based on a maintenance agreement. ") among plurality of computers (100, 120). In one preferred embodiment, replica computer 160 is capable of operating in an on-line mode or in an off-line mode. In the on-line

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mode, the replica computer 160 communicates interactively with customer computer 50 to perform processing tasks. In this on-line mode in the preferred embodiment, the customer computer 50 and the on-line replica computer 160 cooperate to support processing in either and/or both processors (shared access to data buffers and a record locking scheme is used to ensure safe access). In the off-line mode, replica computer 160 performs personal computer tasks in response to direction from host computer 104 without having an on-line, interactive link with customer computer 50.

The business practice of backing up data is notoriously well known in information management. To back up data for the purpose of a secure record management and to improve load balancing, reduction or elimination of fragmentation, and to prevent loss of data from an occurrence of a multiple storage failure.

It would have been obvious to make use of the partnership database management of Bachman to allow data management to store, retrieve, and modify data records in computers over the network to include data backup as one of its services offered to customer(s)/client(s)/partner(s) in view of the express suggestion in Crawford.

*Response to Arguments*

6. Applicant's arguments with respect to claims 1-4, 15-28, 30 and 44-58 have been considered but are moot in view of the new ground(s) of rejection.
  
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey C. Pwu whose telephone number is 571-272-6798. If

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attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



9/17/06 GREY PWU  
PRIMARY EXAMINER